

## PATENT COOPERATION TREATY

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INTERNATIONAL PRELIMINARY EXAMINATION REPORT  
(PCT Article 36 and Rule 70)

REC'D: 06 DEC 2004



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| Applicant's or agent's file reference<br>P31928AGTO/BPU                                      | <b>FOR FURTHER ACTION</b> See Notification of Transmittal of International Preliminary Examination Report (Form PCT/PEA/416) |  |
| International application No.<br>PCT/EP 03/08358   | International filing date (day/month/year)<br>29.07.2003   | Priority date (day/month/year)<br>02.08.2002 |
| International Patent Classification (IPC) or both national classification and IPC<br>A23L200 |  |  |
| Applicant<br>GLYCOLOGIC LIMITED  |  |  |

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of 4 sheets, including this cover sheet.
- ☐ This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).
- These annexes consist of a total of sheets.

3. This report contains indications relating to the following items:
- I ☒ Basis of the opinion
  - II ☐ Priority
  - III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
  - IV ☒ Lack of unity of invention
  - V ☒ Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
  - VI ☐ Certain documents cited
  - VII ☐ Certain defects in the international application
  - VIII ☐ Certain observations on the international application

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|---|---|
| Date of submission of the demand<br><br>30.01.2004  | Date of completion of this report<br><br>03.12.2004   |
| Name and mailing address of the international preliminary examining authority:<br><br> European Patent Office<br>D-80298 Munich<br>Tel. +49 89 2399 - 0 Tx: 523656 epmu d<br>Fax: +49 89 2399 - 4465 | Authorized Officer<br><br>Uhl, M<br><br>Telephone No. +49 89 2399-8654<br> |

**INTERNATIONAL PRELIMINARY  
EXAMINATION REPORT**

International application No. PCT/EP 03/08358

**I. Basis of the report**

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17)*):

**Description, Pages**

1-36 as originally filed

**Claims, Numbers**

1-31 as originally filed

**Drawings, Sheets**

1/6-6/6 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
  - ☐ the language of publication of the international application (under Rule 48.3(b)).
  - ☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).
3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:
- ☐ contained in the international application in written form.
  - ☐ filed together with the international application in computer readable form.
  - ☐ furnished subsequently to this Authority in written form.
  - ☐ furnished subsequently to this Authority in computer readable form.
  - ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
  - ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:
- ☐ the claims, Nos.:
- ☐ the drawings, sheets:

**INTERNATIONAL PRELIMINARY  
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International application No. PCT/EP 03/08358

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

*(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)*

6. Additional observations, if necessary:

**IV. Lack of unity of invention**

1. In response to the invitation to restrict or pay additional fees, the applicant has:

- ☐ restricted the claims.  
☒ paid additional fees.  
☐ paid additional fees under protest.  
☐ neither restricted nor paid additional fees.

2. ☐ This Authority found that the requirement of unity of invention is not complied with and chose, according to Rule 68.1, not to invite the applicant to restrict or pay additional fees.

3. This Authority considers that the requirement of unity of invention in accordance with Rules 13.1, 13.2 and 13.3 is

- ☐ complied with.  
☐ not complied with for the following reasons:

4. Consequently, the following parts of the international application were the subject of international preliminary examination in establishing this report:

- ☒ all parts.  
☐ the parts relating to claims Nos. .

**V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

1. Statement

|                               |             |                   |
|-------------------------------|-------------|-------------------|
| Novelty (N)                   | Yes: Claims | 4-21              |
|                               | No: Claims  | 1-3, 22-25, 28-31 |
| Inventive step (IS)           | Yes: Claims | 4-21              |
|                               | No: Claims  | 1-3, 22-27        |
| Industrial applicability (IA) | Yes: Claims | 1-27              |
|                               | No: Claims  |                   |

2. Citations and explanations

**see separate sheet**

**INTERNATIONAL PRELIMINARY  
EXAMINATION REPORT - SEPARATE SHEET**

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International application No. PCT/EP 03/08358

**Re Item IV**

**Lack of unity of invention**

As already indicated in the international search report, the present application lacks unity of invention since the subject matter of both parts of the invention, namely that in claims 1-21 (pharmaceutical) and 22-31 (food) is not novel.

D1 US5482560, see in particular col.1, l.28-52, ex.1 and cl.11-13.

D2 US4780149, see in particular col.2, l.57-col.3, l.39, ex.1-3 and cl.1-3.

Therefore a common inventive concept is missing.

**Re Item V**

**Reasoned statement with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

US4780149 discloses the use of compositions comprising beta-limit dextrans in pharmaceuticals and food (see col.3, l.26-41, cl.1-3). US5482560 (col.1, l.28-52) the use of compositions comprising beta-limit dextrans obtained from waxy-starch in food and beverage products. Not disclosed are pharmaceutical formulations of the bioadhesive type. Subject matter of claims 1-3 is not novel over the prior art as far as pharmaceutical formulations are concerned and subject matter of claims 21-25 and 28-31 is not novel as far as food formulations are concerned. The condition of obtaining the dextrans from special starches as in claims 29-31 does not affect the question of novelty of the product itself (product by process claims).

The use of beta-limit dextrin as an energy source is not considered inventive as the use of beta-limit dextrin in a foodstuff means inevitable that it serves at least implicitly as energy source as it is a digestable substance.